

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 1/12/21
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AFTERN SANDERSON,

Plaintiff,

-against-

LEG APPAREL LLC; AMIEE LYNN  
ACCESSORIES, INC.; STEVEN H. SPOLANSKY;  
STUART DIAMOND; MELISSA ROMANINO,  
and DAYTONA APPAREL GROUP,

Defendants.

19-cv-8423-GHW

ORDER OF SERVICE

GREGORY H. WOODS, United States District Judge:

Plaintiff brought this *pro se* action under Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. §§ 2000e to 2000e-17, 42 U.S.C. § 1981, and the New York State and City Human Rights Laws, alleging that his employer discriminated against him based on his race and sex. By order dated September 13, 2019, the Court granted Plaintiff’s request to proceed *in forma pauperis* (IFP). By order dated December 14, 2020, the Court granted Plaintiff leave to amend his complaint to add Daytona Apparel Group as defendant. Dkt. No. 126. On January 4, 2021, Plaintiff filed his amended complaint adding Daytona Apparel Group as a defendant. Dkt. No. 129. All defendants other than Daytona Apparel Group have been served and have appeared in this action.

## DISCUSSION

### A. Service on Defendant Daytona Apparel Group

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil

Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendant Daytona Apparel Group through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for Daytona Apparel Group. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon this Defendant.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

### **CONCLUSION**

The Clerk of Court is instructed to complete the USM-285 forms with the addresses for Daytona Apparel Group and deliver all documents necessary to effect service to the U.S. Marshals Service.


The Clerk of Court is directed to docket this as a "written opinion" within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: January 12, 2021

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GREGORY H. WOODS  
United States District Judge

**NEW DEFENDANT AND SERVICE ADDRESS**

1. Daytona Apparel Group  
200 Madison Avenue, 5th Floor  
New York, NY 10016